MEMORANDA

ON THE

EARLY HISTORY OF ONTARIO.

INTRODUCTION OF BRITISH RULE.

By the treaty of Paris, concluded on February 10th, 1763, France finally ceded to Great Britain all that part of North America then known as Canada. On the 7th of October following, a Royal Proclamation was issued by the King of England creating the four new civil governments of Quebec, East Florida, West Florida and Granada. To encourage emigration to these countries the proclamation stated that in the Commissions issued to the civil governors of those Provinces His Majesty had given express power and directions that, so soon as the state and circumstances of the said colonies would admit thereof, they should with the advice and consent of the members of His Majesty's Councils in the said Provinces, summon and call general assemblies of the people within the said governments, in such manner as was usual in those colonies and provinces in America which were under His Majesty's immediate government; and that in the meantime, and until such assemblies could be called, all persons inhabiting in or resorting to His Majesty's said colonies might confide in His Majesty's royal protection for the enjoyment of the benefit of the laws of his realm of England; that for that purpose His Majesty had given power under the great seal to the Governors of His Majesty's said new colonies to erect and constitute said councils, respectively, courts of judicature and public justice within the said colonies for the hearing and determining all causes as well criminal as civil, according to law and equity, and as near as may be agreeable to the laws of England, with liberty to all persons who might think themselves aggrieved by the sentence of such courts in all civil cases to appeal under the usual limitations and restrictions to His Majesty in his Privy Council.* On November 21st, 1763, a royal commission as captain-general and governor-in-chief of the Province of Quebec was given to Major-General Murray, and was published by him in the Province in the month of August, 1764. On September 17th, 1764, the Governor in Council acting under that authority, passed an ordinance creating and establishing Courts of Justice. In this the Chief Justice of the Court of King's Bench was directed to determine all criminal and civil causes "agreeable to the laws of England and the ordinances of the Province," and the judges of the Court of Common Pleas established by the same ordinance were directed to determine the matters before them agreeably to equity, having regard nevertheless to the laws of England as far as the circumstances and situation of things would permit, until such time as proper ordinances for the information of the people could be established by the Governor and Council agreeable to the laws of England, with this proviso, "that the French laws and customs should be allowed and admitted in all causes in the said court between the natives of the said Province in which the cause of action arose before the 1st day of October, 1764."†

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* Haliburton's Bubbles of Canada, p. 25.

† Haliburton's Bubbles of Canada, pp. 27-8.

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From all this it is evident that it was the intention of the British Government at that time to establish British laws in the Province, and many writers assert that a great error was committed when that intention was abandoned. English laws and the English language, they contend, might easily have been substituted then for the French language and the French feudal land laws, and if this had been done all the troubles of later times would have been avoided. But, in fact, the British Government had no choice. The French, who were nearly the whole population were much pleased with the introduction of the English criminal law, but the introduction of the English civil law threatened to disturb the tenure of real estate and destroy the titles by which all the lands then under cultivation were held. One writer says that they were not satisfied "with the change from the antiquated *Coutume de Paris* in the adoption of the English civil jurisprudence." * As soon as they dared to raise their voice they made their dissatisfaction known. The disputes between the older colonies and the mother country had already become serious, and the importance of attaching the Canadians to the Empire had become manifest. A code of laws was prepared which would secure to the French the system of tenure and inheritance to which they had been accustomed. † But before this could be put in operation the necessity for a more sweeping measure became urgent, and in 1774 the Act ‡ entitled "an Act for making more effectual provision for the government of the Province of Quebec in North America" was passed by the Imperial Parliament.

From 1763 the Province had been governed under the authority conferred on the Governor by the Royal Commission alone. The Act of 1774, long known as "The Quebec Act," revoked, annulled and made void the Royal Proclamation which created the Province, the commission "under the authority whereof the government had been administered," "all and every the ordinance and ordinances made by the Governor and Council relative to the civil government and administration of justice," and "all commissions to judges and other officers" of the Province. The reason given for this in section four of the Act is "that the provisions made by the said (Royal) Proclamation in respect to the civil government of the said Province of Quebec, and the power and authorities given to the Governor and other civil officers of the said Province by the grants and commissions issued in consequence thereof, have been found upon experience to be inapplicable to the state and circumstances of the said Province, the inhabitants whereof amounted at the conquest to above 65,000 persons professing the religion of the Church of Rome, and enjoying an established form of constitution and system of laws by which their persons and property had been protected, governed and ordered for a long series of years, from the first establishment of the said Province of Canada."

This Act further provided, that "His Majesty's subjects professing the religion of the Church of Rome and in the said Province of Quebec may have, hold and enjoy the free exercise of the religion of the Church of Rome, subject to the King's supremacy, declared and established by an Act made in the first year of the reign of Queen Elizabeth," and that "the clergy of the said church may hold, receive and enjoy their accustomed dues and rights with respect to such persons only as shall profess the said religion." It provided also "that no person professing the religion of the Church of Rome and residing in the said Province shall be obliged to take the oath required by the said statute of Elizabeth, or any other oaths substituted by any other Act in the place thereof." The form of oath still generally in use in this Province was substituted, and it was provided that persons refusing to take this should incur and be liable to the same penalties and disabilities as they would have incurred by refusing or neglecting to take the oath required by the statute of Elizabeth. The Act further provided, that "His Majesty's subjects within the Province, the religious orders and communities only excepted, may hold and enjoy their property and possessions, together with all customs and usages relative thereto, and all other their civil rights, in as large, ample and beneficial a manner as if the said proclamation, commission, ordinances, and other Acts and instruments had not been made, and as may consist with their allegiance to His Majesty and satisfaction to the crown and parlia-

* Alexander's Bonnycastle, p. 25. † The Bubbles of Canada, p. 30.

‡ 14 George III. c. 83.

ment of Great Britain, and that in all matters of controversy and civil rights resort shall be had to the laws of Canada as the rule for the decision of the same; and all causes that shall hereafter be instituted in any of the courts of justice to be appointed within and for the said Province by His Majesty, his heirs and successors, shall with respect to such property and rights be determined agreeably to the said laws and customs of Canada, until they shall be varied or altered by any ordinance that shall from time to time be passed in the said Province." This was not to extend to lands "granted to be held in free and common soccage," and persons holding property, which they had a right to alienate during their lifetime, were to have the right to devise or bequeath such property as they pleased, whether their wills were executed according to the laws of Canada or the laws of England. The criminal law of England, which was generally satisfactory, was continued in the Province. The Act declared that it was still "inexpedient to call an assembly," and authorized the King with the advice of his Privy Council to constitute and appoint a council for the affairs of the Province of Quebec, to consist of such persons resident there, not exceeding 23 nor less than 17, as His Majesty . . . . may be pleased to appoint; "which . . . . council shall have power and authority to make ordinances for the peace, welfare and good government of the said Province with the consent of His Majesty's Governor." This council was not empowered "to levy any taxes or duties within the said Province, such rates and taxes only excepted as the inhabitants of any town or district . . . . may be authorised by the said Council to assess, levy and apply within the said town or district for the purpose of making roads, erecting and repairing public buildings, or for any other purpose respecting the local convenience and economy of such town or district." All ordinances were to be transmitted to the King for his approbation. He might disallow any of which he disapproved, and "no ordinance touching religion, or by which any punishment may be inflicted greater than fine or imprisonment for three months would have any force or effect until it had received His Majesty's approbation. The Act provided that no ordinance should pass unless a majority of the whole council were present, and that except in case of emergency none should pass except between the first day of January and the first day of May. The right of the King to constitute, under the great seal, Courts of Criminal, Civil and Ecclesiastical jurisdiction within the Province was reserved, and it was provided that this Act should not repeal any Imperial Act prohibiting, restraining or regulating the trade or commerce of His Majesty's colonies and plantations in America.

Another Act of the Imperial Parliament passed in the same year,* entitled "An Act to establish a fund towards further defraying the charges of the administration of justice and support of the Civil Government within the Province of Quebec in America," repealed the laws imposing duties on imports made by the kings of France, and imposed in lieu thereof other duties. These duties were light. On every gallon of spirits, the manufacture of Great Britain, threepence sterling; on every gallon of rum or other spirits from the British West Indies, sixpence; on every gallon of rum or other spirits from any other of His Majesty's colonies or dominions in America, ninepence; on every gallon of brandy or other foreign spirits imported from Great Britain, one shilling; on every gallon of spirits imported from any other place, one shilling; on every gallon of molasses or syrup, if imported in British ships, threepence; if imported in foreign vessels, sixpence. All goods liable to duty if brought overland must pass and be carried through the port of Saint John's, near the river "Sorrel," and if by any inland navigation they must pass and be carried in the river Sorrel, by the said port and there be entered. Persons wishing to keep a house or other place of public entertainment, or for retailing wine, brandy, or other spirituous liquors, was required to obtain license from the Governor or Lieut.-Governor, and to pay a duty of £1 16s. sterling for every license. All the moneys raised by these means were to be paid by the collectors into the hands of the Receiver-General, and to be applied in the first place to defray the expenses of the administration of justice, and of the support of civil government in the Province, the residue (if any) to be held for the future disposition of Parliament. It was provided that this Act should

* 14 George III. c. 88.

not be held to extend to discontinue, determine, or make void any part of the territorial or casual revenues. The duties were not heavy, but the right of the British Parliament to impose upon the colonies taxation without representation, and to dispose as it pleased of the money raised by such means, was unequivocally asserted.

The Quebec Act continued in force throughout Canada until the year 1791.

So absolute was the control of the Government in those days, that when the people of a parish wished to build a church or Presbytery, they must obtain the authority of the Intendant before they could meet to make provision for the work, and when they met they must choose four persons from themselves who, with the curé, the seignior, and the captain of militia, would determine what the character and probable cost of the work should be. The captain of militia superintended the work and compelled each of the parishioners to do his share. These meetings and elections for the management of church affairs afforded the people almost the only opportunities then permitted to them of judging and acting for themselves, and even these could not be held until authorised by ordinance.

In 1664 an ordinance, giving the West India Company large powers, erected Quebec into a provostry, and introduced what is known as the law and custom of Paris. The provostry had jurisdiction in first resort of all matters, civil and criminal, until the conquest. It was composed of a lieutenant-general, of his substitute, and of a royal procurator and registrar. In 1679 Louis XIV ordained by edict that appeals should be from seigniorial awards to the royal courts and to the sovereign councils. All judges of subaltern courts and official procurators therein were previously prohibited from taking any salary or emoluments on pain of prosecution as extortioners. The dependent justices, judges of Montreal and Three Rivers, were organized in like manner to that of the provostry. The first admiralty court was erected in 1717. The royal intendant also held a court in which he took cognizance of all matters which concerned the King, and of all misunderstandings arising between the seigniors and their renters. He named at times lay delegates, who disposed of debt cases, of any sum from one franc to one hundred, with a reserve of appeal to himself. There were no costs incurred in his court, wherein were adjudged also trading cases, and he was also judge consul for Canada. A right of final appeal lay from his decisions as from those of the Sovereign Council to the Council of State held in Paris, or wherever the King kept his court for the time. Such was the judicial system which existed until 1760.

The Act 14 Geo. III., c. 83, described the boundaries of Canada. It provided "That all the territories, islands, and countries in North America, belonging to the Crown of Great Britain, bounded on the south by a line from the Bay of Chaleurs, along the high lands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude on the eastern bank of the river Connecticut, keeping the same latitude directly west through the Lake Champlain until in the same latitude it meets the River St. Lawrence, from thence up the eastern bank of the said river to the Lake Ontario, thence through the Lake Ontario and the river commonly called Niagara, and thence along by the eastern and south-eastern bank of Lake Erie, following the said bank until the same shall be intersected by the northern boundary granted by the charter of the Province of Pennsylvania, in case the same shall be so intersected, and from thence along the said northern and western boundaries of the said Province until the said western boundary strikes the Ohio; but in case the said bank of the said lake should be found not to be so intersected, then following the said bank until it shall arrive at that point of the said bank which shall be nearest to the north-western angle of the said Province of Pennsylvania, and thence by a right line to the said north-western angle of the said Province, and thence along the western boundary of the said Province until it strike the River Ohio, and along the bank of the said river westward to the banks of the Mississippi and northward to the southern boundary of

the territory granted to the merchants, adventurers of England trading to Hudson's Bay, and also all such territories, islands and countries as have since the tenth of February, one thousand seven hundred and sixty-three, been made part of the government of Newfoundland be, and they are hereby during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of October 7th, 1763."

Although the efforts of the French monarchs to establish a hereditary aristocracy in Canada under circumstances much more favorable, had failed, Mr. Pitt and others seriously expected that the British government would be more successful. When introducing the Quebec Bill in the British House of Commons on March 4th, 1791, Mr. Pitt said that the members of the Legislative Council were "to be members for life reserving power to His Majesty to annex to certain honours an hereditary right of sitting in the Council." On April 8th, when the Bill was again under consideration, Mr. Fox argued that the measure was objectionable in many respects. He thought it absurd to regard the proposed House of Assembly as a popular Assembly if it had but sixteen members. As to hereditary powers and hereditary honours, he said "that they were good or that they were not good, as a general proposition was not easily maintained, . . . but to give life and birth to such principles in countries in which they did not exist, appeared to him to be exceedingly unwise. He could not account for it unless it was that Canada, having formerly been a French colony, there might be an opportunity of reviving those titles of honour the extinction of which some gentlemen so much deplored, and to revive in the west that spirit of chivalry which had fallen into disgrace in a neighbouring country. He thought these powers and honours wholly unnecessary and tending rather to make a new constitution worse than rotten. If the Council were wholly hereditary, he should equally object to it: it would only add to the power of the king and the Governor; for a Council so constituted would only be the tool of the Governor, as the Governor himself would only be the tool and engine of the king. . . . The Legislative Council ought to be totally free and repeatedly chosen in a manner as much independent of the Governor as the nature of a colony would admit. Those he conceived would be the best; but if not, they should have their seats for life; be appointed by the king, consist of a limited number, and possess no hereditary honours." Mr. Pitt, in reply, argued that "according to the present state of the colony and the population of the Province," the Legislative Assemblies could not well be more numerous than was proposed. With the increase of population the Assemblies would increase. "As to the Legislative Council he totally and entirely differed from the Rt. Hon. gentlemen who thought it would be better if it were to be an elective Council in the manner which had been lately established in America. . . . He had no hesitation in declaring that the English constitution which we had chosen was, in its principle, the best for us; better than any of those Republican principles, . . . which the Rt. Hon. gentleman had described as the consequence of greater learning and light and which he said shone in the constitution of France and America. . . . An aristocratical principle being one part of our mixed government, he thought it proper there should be such a council in Canada as was provided by the Bill, and which might answer to that part of the British constitution which composed the other House of Parliament." When the consideration of the Bill was resumed on May 6th, Mr. Burke made a memorable speech. The House, he said, was "bound to give to the people of Canada the best government that their local situation and their connection with this country would permit. . . . Were we to give them the French constitution, founded on principles diametrically opposed to ours, that could not assimilate with it in a single point, as different from it as wisdom from folly, as vice from virtue, as the most opposite extremes in nature—a constitution founded on what was called the rights of man." Mr. Burke, who was frequently called to order, described the French revolution as all that was hideous and detestable, and argued that all who favoured an elective Legislative Council for Canada must be held to desire the introduction of the principles of that revolution. Mr. Fox spoke of this as a deliberate attack on himself, and although he shed tears and each spoke of the

other in terms of admiration, their friendship, which had been weakened by their differences on this subject, appears to have then come to an end. In the same debate Mr. Pitt said:—"The fact was that in discussing the subject of the new constitution for Canada, he had suggested his intention to propose, as the Bill in fact did provide, an hereditary council in imitation of our House of Lords, whereas the Rt. Hon. gentleman (Mr. Fox) had suggested that in his opinion an elective council would be preferable, and as he had just been talking of the governments of the Independent and United States of America, which were republics, he (Mr. Pitt) had conceived that the Rt. Hon. gentleman was inclined to think that a greater infusion of republican principles into the new government of Canada would be better adapted to that province than a constitution more exactly similar to our own, and therefore in his reply he had given his sentiments againstany greater infusion of republicanism into the new constitution of Canada than at present subsisted in the British constitution." To be suspected of a preference for republican institutions would at that time prove fatal to any public man in Great Britain, and when the Bill was again under consideration, on May 11th, Mr. Fox took occasion to prove that his suggestion was not meant to prepare for the introduction of institutions more republican than those of Great Britain. Aristocracies existed, he then said, under all forms of government and were valuable in all. "Upon every ground of consideration it would be wise and, what was more, indispensably necessary that an aristocracy should make a branch of the constitution for Canada; it was undoubtedly equally important with either the popular or the monarchical. But then the nature of the case must be considered, and he should therefore not advise the giving Canada a servile imitation of an aristocracy because we could not give them a House of Lords like our own. The Rt. Hon. gentleman over the way appeared to be aware of this and therefore he had recourse to a substitute for hereditary nobility. It was, however, he must contend a very inadequate substitute; it was a semblance but not a substance. Lords indeed we might give them, but there was no such thing as creating that reverence and respect for them on which their dignity and weight in the view of both the popular and the monarchical part of the constitution depended, and which alone could give them the power of control and support that were the objects of their institution." He argued that the councillors should not be appointed by the crown and contended that they should be elective. But how elective? Not as the members of the House of Assembly were intended to be, but upon another footing. He proposed that the members of the Council should not be eligible to be elected unless they possessed qualifications infinitely higher than those who were eligible to be chosen members of the House of Assembly; and in like manner the electors of the members of the Council must possess qualifications also proportionally higher than those of the electors of representatives in the House of Assembly. By this means they would have a real aristocracy chosen by persons of property from amongst persons of the highest property, who would thence necessarily possess the weight, influence and independency from which alone could be derived a power of guarding against any innovations that might be made either by the people on the one part or the crown on the other." In order to show that his idea of an elective council was not a new one, he said that before the revolution more of the councils in our colonies were elected by the people than were appointed by the king. If the committee refused to accept the amendment making the council elective, he would propose that the councils "should be all at the nomination of the king or all hereditary." Mr. Pitt, replying to Mr. Fox, said he agreed with him that "we could not give all the respect to a new nobility that belonged to an hereditary line of nobles traceable to antiquity, but we could give the same degree of respect to it as had accompanied the origin of our nobility, and succeeding ages would bestow all the rest." A member having laughed, Mr. Pitt said "that he would not believe that even in the infancy of such honours there was anything that ought to provoke a smile, . . . he thought there was something in the habits, customs and manners of Canada that peculiarly fitted it for the reception of hereditary honours, and in respect to seigniories he imagined that some of the seigniors were to be found of sufficient property and respect to make it fit, that they should be among others named to those honours, . . . and he was firmly persuaded that the aristocracy flowing from the Imperial crown of Great Britain would tend materially, to strengthen the system of connection between the colony and the mother country. The

want of these honours had tended to accelerate the separation of the former colonies." Mr. Wilberforce said "that let the elective council be for life or for a term of years, in the one case they would clog the prerogative and deprive the subject of its protection, in the other point of view it would be a democracy under another name and give the popular branch of government too much power, whereas if they adopted an hereditary council they would form an open aristocracy, and though at first it may produce only saplings, in the course of years they would become forests capable of bearing up against any innovation either of the crown or people. On May the 16th, the House divided upon the amendment striking out the clause providing for an hereditary nobility and the amendment was defeated, 39 voting for and 88 against it. The proposal to set aside one-seventh of all the lands then ungranted for the support of "the Protestant clergy" also gave rise to much controversy. Mr. Fox opposed it because it seemed to him absurd; because the greater part of those lands must go to the clergy of those religious bodies known as dissenters in England, and they received no such proportion of the lands in Scotland or in any other ecclesiastical country in Europe;" because the regulations respecting the lands to be reserved were obscure since the manner in which they were to be applied was not stated; and because the effect on the clergy would be "rather to corrupt than to benefit them."

Thus we find that notwithstanding the great issues of the revolutionary war, the ideas of the ruling class in England in 1791 were not much in advance of those which prevailed at the French Court when King Henry the Fourth authorised the Marquis de la Roche to create a Canadian nobility. The Constitutional Act of 1791 provided for a hereditary upper chamber of the Legislature and for an established church.

The right of the Imperial Parliament to make such regulations for the trade between the two Provinces, or the trade between either of them and any other part of the Empire, or any foreign country and to establish such restrictions or prohibitions, and impose, levy and collect such duties as it thought fit, was expressly asserted and reserved in this Act, and declared to be "necessary for the general benefit of the British Empire."† The Act 14th Geo. III., which imposed custom duties on goods brought into Canada, provided that the proceeds of such duties should be applied in the first place in making provision for the expenses of the administration of justice and of the support of civil government in the Province, and that "the residue of the said duties should remain in the hands of the Receiver-General for the future disposition of Parliament." This was changed by the Act 18 Geo. III., c. 12, and the Constitutional Act provided ‡ that "the net produce of all duties which shall be so imposed shall at all times hereafter be applied to and for the use of each of the said Provinces respectively, and in such manner only as shall be directed by any law or laws . . . . made . . . . by and with the advice and consent of the Legislative Council and Assembly of each Province."

In the old Province the Governor and Council were a court of civil jurisdiction, for hearing appeals in certain cases. Section 34 of the Constitutional Act provided that the Governor or Lieut.-Governor in each of the newly created Provinces respectively, together with such Executive Council as His Majesty may appoint, should be a court of civil jurisdiction for hearing and determining appeals with such powers as the Governor in Council of Quebec previously had.

Section 35 recited the instructions issued to several Governors respecting the accustomed dues and rights of the clergy of the Church of Rome and the payment of tithes and confirmed those instructions. Section 36 provided that lands in both Provinces may be appropriated for the support of a Protestant clergy; section 37, that the rents and profits of the lands so appropriated should be applicable solely to the support of a Protestant clergy within the Province. Section 38 authorized the Governor or Lieut--Governor to cause one or more messuages or sections with glebe lands attached to be constituted and erected within every township or parish. Section 39 authorized the Governor or Lieut.-

† Section xlvi. ‡ Section xlvii.

Governor to present to every such parish or section an incumbent or minister of the Church of England, "and such presentation and the enjoyment of such messuages or sections were made by section 40, subject and liable to all rights of institution, and all other spiritual and ecclesiastical jurisdiction and authority which have been lawfully granted by His Majesty's letters patent to the Bishop of Nova Scotia."

"We picture to ourselves," says Dr. Scadding,* "the group of seven crown appointed councillors and five representatives of the commons assembled there with the first Speaker, McDonnell of Glengarry; all plain, unassuming, prosaic men listening at their first session to the opening speech of their frank and honoured Governor. We see them adjourning to the open air from their straightened chamber at Newry Hall and conducting the business of the young Province under the shade of a spreading tree, introducing the English code and trial by jury, cleaning roads, and prohibiting the spread of slavery, while a boulder of the drift lifting itself up through the natural turf serves as a desk for the recording clerk. Below them in the magnificent estuary of the river Niagara the waters of all the Upper Lakes are twisting by, not yet recovered from the agonies of the long gorge above, and the leap at Table Rock." At the opening of the session of 1795 there were actually but two members of the Council and five members of the Assembly present. The Governor deferred the meeting until harvest time to await the arrival from England of the Chief Justice who was to be Speaker of the L. Council, and he had not yet arrived. Members of both Houses were busy saving their crops, and travelling in those times was slow and difficult. "But within two days a year would have expired since the last session." And although there was not a quorum of either House the Governor "thought it right to open the session, reserving however to either House the right of proroguing (adjourning) the sitting from one day to another in expectation that the ships from Detroit and Kingston would either bring the members who were yet wanting or certain intelligence of their not being able to attend.† Even under those circumstances some of the decent ceremonial "usual at the opening of Parliament was observed." The Duke de Liancourt, who saw the opening of the session, tells us that "the whole retinue of the Governor consisted in a guard of fifty men of the garrison of the fort. Draped in silk he entered the Hall with his hat on his head attended by his adjutant and two secretaries. The two members of the Legislative Council gave by their Speaker notice of it to the Assembly. Five members of the latter having appeared at the bar, the Governor delivered a speech modelled after that of the King."

General Legislation.

The other Acts passed in the second session were of importance. It was found necessary to pass an Act to confirm and make valid a number of marriages, because as the preamble states "Many marriages had been contracted at a time when it was impossible to observe the forms prescribed by law for the solemnization thereof, by reason that there was no Protestant parson or minister duly ordained residing in any part of the Province, nor any consecrated Protestant church or chapel within the same." All marriages contracted by persons not being under any canonical disqualification, that were publicly contracted before any magistrate or commanding officer of a post, or adjutant, or surgeon of a regiment acting as chaplain, or any other person in any public office or employment before the passing of this Act were confirmed, and declared good and valid in law. This Act also provided that "until such time as there should be five parsons or ministers of the Church of England severally incumbent or doing duty in their respective parishes or places of residence in any one district, parties, neither of whom resided within eighteen miles of any such parson, may be lawfully married by any justice of the peace within the district after public notice given as prescribed.

An Act was passed to "establish a Court of Probate in this Province, and also a Surrogate Court in every district thereof," also "an Act to provide for the appointment of returning officers of the several counties" by the Lieutenant-Governor.

* Toronto of Old, pp. 29.

† 43 Geo. III. c. 11.

An Act to provide for the payment of what were called the wages of members of the House of Assembly was passed. The Act by which this was repealed* described the amount paid as "compensation to the members of the House of Assembly for their attendance in their duty in Parliament." This provided that "after every prorogation or dissolution of the Assembly . . . . it should be lawful for every member, having attended, to receive from the Speaker . . . . a warrant under his hand and seal signifying the time that such member hath attended his duty in the said Assembly, and every member possessed of such warrant may demand of the Justices of the Peace for the district in which the county or riding represented by such member may be situate, in their general quarter sessions assembled, a sum not exceeding ten shillings per day for every day the said member had been engaged in the attendance of his duties in the House of Assembly, and had been necessarily absent from his place of abode in going to or returning from his attendance." The Justices were authorized to levy the sum by assessment on the inhabitants of the county or riding, and to issue their order to the district treasurer to pay the amount "out of the moneys which may come into his hands under and by virtue of any Act of the Provincial Parliament." If the member represented parts of two or more distircts, he was to obtain from the Speaker a warrant addressed to the Justices of each district stating what part each district should pay. To provide for the salaries of the officers of the Legislative Council and House of Assembly, and for defraying the consequent expenses of both Houses a "duty of twenty shillings was imposed upon every person keeping a house or place of entertainment or retailing wine, brandy, or other spirituous liquors, in addition to the £1 16s. sterling imposed by the Imperial Act 14 Geo. III.

The Act "to prevent the further introduction of slaves and to limit the term of contracts for servitude within this Province" was not the least important of the Acts of this session. It was probably the first Act of the kind passed by any legislature. An Imperial Statute * entitled an "Act for encouraging new settlers, provided that from and after August 1st, 1790, if "any person or persons being a subject or subjects of the territories or countries belonging to the United States of America shall come from thence, together with his or their family or families, to . . . . any part of the Province of Quebec or of Nova Scotia . . . . for the purpose of residing there, it shall be lawful for such person or persons having first obtained a license for that purpose . . . . to import with the same in British ships owned by his Majesty's subjects and navigated according to law, any negroes, household furniture, utensils of husbandry, and clothing, free of duty provided that such household furniture, utensils of husbandry and clothing shall not in the whole exceed fifty pounds for every white person that shall belong to such family, and the value of forty shillings for every negro brought by such white person. It also enacted "that all sales or bargains for the sale of any negro, household furniture, utensils of husbandry or clothing so imported which should be made within twelve months after the importation of the same (except in cases of bankruptcy or death of the owners thereof) should be null and void." Negroes were, in fact, articles of merchandise at that time in all the British possessions, and sales of negroes in Great Britain itself were not wholly unknown. This Imperial Statute was passed expressly on the grounds that it was "expedient that encouragement should be given to persons disposed to come and settle in certain of His Majesty's colonies and plantations in America and the West Indies. The climate would probably have prevented the success of the experiment in Canada. But the Canadian Act passed three years after declared that "it was unjust that a people who enjoy freedom by law should encourage the intoduction of slaves," and that it was "expedient to abolish slavery in this Province so far as the same may gradually be done without violating private property" and it therefore repealed the Imperial Act so far as it related to Upper Canada and enacted that "from and after the passing of this Act" it should not be "lawful for the Lieutenant-Governor to grant a license for the importation of any negro or other person to be subject to the condition of a slave, or to a bounden involuntary service for life into any part of this Province; nor shall any negro or

* 30th Geo. III. c. 27.

other person who shall come or be brought into this Province after the passing of this Act be subject to the condition of a slave, or to such service aforesaid within this Province; nor shall any voluntary contract of service or indentures that may be entered into by any parties within this Province after the passing of this Act be binding on them or either of them for a longer time than a term of nine years from the day of the date of such contract. The second section of the Act provided, that "it should not be construed to extend to liberate any negro or other person subjected to such service, or to discharge them or any of them from the possession of the owner thereof if they "had come or been brought into the Province in conformity to the conditions prescribed by any authority for that purpose exercised . . . . or had otherwise come into the possession of any one by gift, bequest, or *bona fide* purchase before the passing of the Act." And in order to prevent the continuation of slavery, it was enacted* that immediately from and after the passing of this Act, every child that should be born of a negro mother or other woman subject to such service as aforesaid should abide or remain with the master or the mistress in whose service the mother was living at the time of the child's birth (unless such mother and child should leave such service by and with the consent of such master or mistress) and such master or mistress should (and was required to) "give proper nourishment and clothing to such child or children, and should and may put such child or children to work when he, she or they may be able so to do, and should and may retain him or her in their service until every such child may have attained the age of twenty-five years, at which time they and each of them shall be entitled to demand his or her discharge from and shall be discharged by such master or mistress from any further service." If this were refused, the person held in servitude was authorized to apply to a magistrate, who, on being satisfied that he or she was of the age of twenty-five years, was empowered and required to give him or her a discharge. It was further provided that children born of such parties during their infant servitude or after should be entitled to all the rights and privileges of free born subjects.

How long slavery existed to any extent under the operation of this Act we have no been able to learn. Dr. Scadding † tells us, that "most gentlemen, from the administrator of the government downwards possessed some slaves. Peter Russell (who at one time administered the government) was in 1806 anxious to dispose of two of his, and thus advertised in the *Gazette* and *Oracle*, mentioning his prices: 'To be sold, a black woman, named Peggy, aged forty years, and a black boy, her son, named Jupiter, aged about fifteen years, both of them the property of the subscriber. The woman is a tolerable cook and washerwoman, and perfectly understands making soap and candles; the boy is tall and strong for his age, and has been employed in the country business, but brought up principally as a house servant. They are each of them servants for life. The price of the woman is one hundred and fifty dollars, for the boy two hundred dollars, payable in three years, with interest from the day of sale, and to be secured by bond, etc. But one-fourth less will be taken for ready money. York, February 19th, 1806. Peter Russell.'" This was by no means a solitary instance. The latest case mentioned by Dr. Scadding, in which persons appeared publicly as slaves was in March, 1811, when a boy and girl, slaves, were committed for having stolen some money from the Secretary William Jarvis, and having run away from his service. It does not seem surprising to learn that in those days the lash, the pillory and the stocks were in frequent use, and that branding was not uncommon.

In the third session an Act for the regulation of juries was passed. By this the inhabitant householders were required to serve as jurors. Another Act established a Court of King's Bench, in which a chief justice and two puisne judges should preside, and defined its power and jurisdiction. Another Act established a court for the consideration of small causes. Another, lest "inconvenience may ensue from the want of persons duly authorized to practice the profession of the law, (a strange want) empowered the Lieut.

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* Section 3.

† Toronto of Old, pp. 292-6.

Governor to authorize by license such, and so many of His Majesty's liege subjects, not exceeding sixteen in number, as he shall deem from their probity, education and condition in life best qualified to act as advocates and attorneys." An amending Act provided that an additional gaol and court house should be built in the eastern district in the town of Cornwall, and provided how the necessary funds should be raised, but as the sections relating to this were temporary in their operation, they are omitted from the statute book. An "Act to lay and collect a duty upon stills" required all who wished to distil spirituous liquors for sale to obtain a license, imposed a duty not exceeding one shilling and three pence for every gallon which the body of the still might be capable of containing, and prescribed the mode of ascertaining the capacity of the stills.

In the fourth session, besides amending the Act establishing the Court of King's Bench and some other Acts, the Legislature passed an Act to regulate the practice of physic and surgery, an Act to ascertain the eligibility of persons to be returned to the House of Assembly, and "an Act for the public registering of deeds, conveyances, wills, and other incumbrances which may affect any lands, tenements or hereditaments within the Province." They also passed an Act to ratify, approve and confirm the provisional agree-

ment entered into by the Commissioners of this Province with the Commissioners on behalf of the Province of Lower Canada. This related to the division between the two Provinces of the amounts collected as Customs duties in Quebec.

In the fifth session the Legislature passed an Act to determine the value in currency of all the coins then in circulation. The other Acts passed during the session were but amendments of previous Acts.

A Foreigner's Impression.

The Duke de la Rochefoucault Liancourt, in his description of his travels in North America, gives an interesting account of the state of things in Canada at this period as observed by him during a prolonged sojourn as a guest in the house of Governor Simcoe. He says that the system of representative government, created by the Act of 1791, was so framed that all the springs of the political machine were still in the hands of the Governor-General, yet "if the country grew more populous, more opulent, and enlightened, it would not prove an arduous task to rescue the management of public affairs from this influence, which, at present is very great, and, in the actual state of things, perhaps absolutely necessary."

"The plan conceived by General Simcoe for peopling and improving U. Canada "wrote the Duke," seems, as far as he has communicated it to us, extremely wise and well arranged. The central point of all his settlements and of the population of this country he means to place between Detroit River and the plantations already established in Lower Canada, within a square formed by Lake Ontario, Lake Erie, Detroit River and Lake Huron." Of the selection of York as the capital, the Duke says: "York, from its extent, security and situation, offers an excellent road. The communication between Lake Ontario and Lake Huron is facilitated by several rivers and small lakes. . . . Even in a military point of view its situation is very advantageous The banks of Lake Ontario are likely to be first peopled by the Americans and to become most populous, and Lower Canada will always prove to them an object of jealousy and envy rather than Upper Canada. On this ground it is extremely important to choose a situation which renders it more easy to succor such points as are exposed to attack." Governor Simcoe, however, intended, the Duke says, to make London the permanent seat of government. The reasons assigned are almost entirely military in their character. The chief object of Governor Simcoe in all he did or contemplated being to prepare for another war with the United States he welcomed emigrants from that country, but he took care so to locate them that they could not prove dangerous in case of war. The Duke says, "the Governor is sanguine in his hopes of procuring many colonists from the United States; he relies on the natural fondness of these people for emigrating and on their attachment to the English govern-

ment. There arrive, indeed, every year, a considerable number of families from different parts of the Union; they do not all settle it is true, but some remain in the country." He also anticipated a considerable immigration from Europe. "Yet by his account, the prevailing sentiments of the people render the admission of new inhabitants who present themselves rather difficult, especially of those who come from the United States. For this reason he sends such colonists as cannot give a satisfactory account of themselves into the back country, and stations soldiers on the banks of the lakes which are in front of them." He proposed to facilitate the discharge of soldiers who wished to settle in the country, and to give them free grants of land. He would thus "form a militia attached to the King from habit and gratitude, and this he considered one of the most certain means for suppressing the disturbances which might be excited by disaffected new settlers who inhabit the midland counties, and at the same time one of the best measures of defence in case of attack. By this plan of settling amid the soldiers, officers and gentlemen whom he hopes to attract from England, he wishes to form a class of gentry and to promote, more or less, the project clearly discernable in the new constitution, to introduce into the two Canadas an hereditary nobility."

The Duke saw that there were many obstacles to the success of these and other great projects. The free grant of lands was not so great an inducement to persons to come into the country as at first it seemed to be, as the grants were not absolute in the first instance, and in many cases the lands when partly improved may revert to the Crown, the patent which conveyed a full title issuing in all cases according to the will and pleasure of the Council, and in many cases being withheld for years. In the United States all the rights of property vested at once in the purchaser, although he was to make payment by "distant instalments." The reservation of mines and of timber supposed to be fit for the navy lessened the value of the grants in Canada. "The attachment to the King of Great Britain, which was frequently alleged as a ground for immigration," the Duke thought an idle dream, yet it was "common with all Englishmen who hold here places under government, to boast of this attachment of many inhabitants of the United States of every rank and description."

The population at that time was supposed to be 30,000. This the Duke thought an over estimate. The principal settlements were "that of Detroit, which consists entirely of French families, and is mostly situate on a tract of land that, according to treaty, is to be given up to America; . . . a very considerable colony which stretches along the river from Fort Erie to Newark; . . . a few plantations on the creeks which run into Ontario from Newark up to its northern point; an insignificant beginning of a settlement in York; and lastly, in Kingston, extending along the banks of the St. Lawrence to the boundaries of Lower Canada, which is the most populous of all."

"Upper Canada," wrote the Duke, "pays no taxes except a duty on wine, amounting to four pence per gallon on Madeira, and two pence on other sorts of wine, and another of thirty-six shillings sterling a year for a tavern license, which during the session of 1793 was increased by twenty shillings, Canada currency. The sum total of the public revenue amounts to nine hundred pounds sterling, out of which are paid the salaries of the Speaker of the House of Representatives, and of the Secretaries; the remainder is destined to meet the expense which local circumstances may require for the service and maintenance of society. The Justices of the Peace determine in the quarter-sessions, as they do in England, the amount of the county rates for the construction of public buildings, the repair of roads and the maintenance of the army. (?) These rates are raised by means of a capitation or poll tax assessed in proportion to the probable amount of the property of the whole who are in the district liable to contribute; the largest assessment on any individual exceeds not four dollars. On the same principle is raised the pay of the members of the Assembly. . . . The quarter sessions are held in every district and the division into districts is connected with the administration of justice. The Justices of the High Court of Judicature for civil and criminal causes, who are three in number, including the Chief Justice, hold four sessions annually in the town in which the Governor resides; they also go on circuit in the different districts of the Province once a year. Judges for the different districts sit at shorter intervals to settle matters of little importance, and the Justices of the Peace exercise the same jurisdiction as in England.

A tribunal composed of the Governor and two members of the Executive Council form the Court of Appeal in such cases as have been decided by the High Court of Judicature. The Governor forms also, with the concurrence of an assistant, the choice of whom depends entirely on his option, a Court of Chancery for the decision of causes concerning testaments, intestate heirs, orphans, etc.

"Respecting the frequency and punishment of crimes, Mr. White, Attorney-General of the Province, informed me that there is no district in which one or two persons have not already been tried for murder; that they were all acquitted by the jury although the evidence was strongly against them; that from want of prisons, which are not yet built, petty offences which, in England, would be punished with imprisonment are here mulcted, but that the fines are seldom paid for want of means of execution, and that the major part of lawsuits have for their object the recovery of debts; but sometimes originate also from quarrels and assaults, drunkenness being a very common vice in this country.

"The Province of Upper Canada is divided into the four districts of Detroit, Niagara, Kingston and St. John's. The Justices of the Peace are selected from among those persons who are best qualified for such an office; but in a country so recently settled men worthy of this trust cannot be numerous. The division of U. Canada into counties is purely military, and relates merely to the enlisting, completing and assembling of the militia. . . , In 1794 an additional act passed (which) tended to improve and define more accurately the internal form of the regiments, battalions and companies, and to render the assembling of detachments more easy and expeditious."

"All the expenses of the civil and military administration of Upper and Lower Canada are defrayed by England, the sum total, including the political expenses or the money paid to the Indians, amounts for Upper Canada to £100,000 sterling. Nearly two-thirds of this or £60,000 are paid to the Indians including the pay of the principal agents, under agents, interpreters, etc. This pay deducted, all the other charges occasioned by the Indians, consist in presents, tomahawks, muskets, powder and ball, knives, blankets, rings, buckles, hats, looking-glasses, and above all in rum. . . . The Americans are represented to them as their inveterate enemies. They are made to swear that they will burn and scalp these foes at the first signal. It was in this manner the Governor imagined last year, from the reports he had received, that he should be able to dispose of fifty thousand men who had all taken an oath not to leave a scalp on the skull of any American they should fall in with."

"We have been told here that England's annual expenditure for Upper and Lower Canada amounts to four or five hundred thousand pounds sterling; whether the pensions and donations which England bestows on some inhabitants of the United States be comprised in this estimate, I know not; but this I know, from a very respectable source, that they amount to a pretty large sum. It is this circumstance to which Messrs. Hammond and Simcoe allude when they speak of the numerous friends of the King of Great Britain in the United States.

"I have not yet mentioned that the Governor is also president of an executive council composed of five members. In regard to the Bills which have passed both Houses, his assent or dissent is determined by a majority of votes. But as he appoints this council, and has also the power of dissolving it, we may easily conceive that it consists of members entirely dependent on him. The major part hold seats in the Legislative Council. This council reserved to itself the introductory disposition as well as the definitive determination "of all that related to the issue of land grants." The number of those who apply for lands is uncommonly great. The claims of the petitioners are generally grounded on their attachment to the British monarch and their disgust or hatred against the government of the U. States. But under allegations of this kind frequently lurks a spirit of speculation."

The Duke describes at some length the means employed to attach the Indians to the English and to inspire them with hatred of the people and government of the United States. The Governor frequently received visits from the Indians who were always feasted and supplied with rum, and sometimes he visited them.

"The Episcopal," he wrote, "is the established religion in Upper Canada. In Detroit, however, half of the inhabitants are Roman Catholics, and some families of Quakers,

Baptists and Tunkers are scattered through the province, though in small numbers. A seventh part of the land is allotted to the support of the Protestant clergy. For the Roman Catholic service nothing is paid except in Detroit. No church has yet been built even in Newark. In the same halls where the Legislative and Executive Councils hold their sittings, jugglers would be permitted to display their tricks if any should ever stray to this remote country."

"There have not been more than twelve houses hitherto built in York. They stand on the bay near the river Don. The inhabitants do not possess the fairest character. . . . In a circumference of 150 miles, the Indians are the only neighbours of York. They belong to the tribe of the Mississagas."

The Duke thought that the separation of Canada from the British Empire, at no distant day, was inevitable. "The natural order of things and the universal disposition of nations announced" this. "Great Britain may be able to maintain her power over this country," he wrote, "as long as considerable sums shall be expended to promote its population and prosperity; as long as it shall enjoy the most complete exemption from all the taxes and burdens of the mother country; in fine, as long as a mild government by resources prompt and well applied by useful public establishments not yet existing, and by encouragements held out to all classes and descriptions of citizens, shall convince a people already invited and qualified by a wise constitution, to enjoy all the blessings of liberty, of the advantages of a monarchical government which, in its benevolent projects, unites wisdom of conception with rapidity of execution. But these conditions are and will hardly be fulfilled. In our time, perhaps soon, Great Britain will lose this bright jewel of her crown. In regard to Canada she will experience the same fate as she is likely to share, sooner or later, respecting her possessions in India; as will befall Spain in respect to her Florida and Mexico; Portugal in respect to her Brazil, in short all European powers respecting such of their colonies, at least as they possess on the continents, unless enlightened by experience they shall speedily change the colonial form of government." Great changes have been made in the form of government of these Provinces since the Duke's day. The Canadian form of government cannot with propriety be described as "colonial" now.

The fair promises of Simcoe's time were not fulfilled. Mills Jackson, in his pamphlet, under date January 10th, 1809, says that "although the first Act of the Provincial Parliament was to adopt the law of England as the rule in all civil, as well as criminal cases, . . . the purity and perfection of that admirable system were quickly overturned. The establishment of the English law was not construed to be the law practiced in Westminster Hall, but was made to include all the statutes made to coerce the viciousness or restrain the fraudulence pursued in the colonies in their primitive depravity, and by the continuance of which, when they became unnecessary or oppressive, the United States were first irritated because they would not submit to a code which overturned the common law of England and vitiated the first principles of evidence; yet these laws were enforced in Upper Canada and when insufficient for the purposes of oppression, the ordinances of Lower Canada were resorted to as if legally established. . . The Judges subject to the control of power, might seek strength for their decisions, permanency in their stations, and every colonial advantage, rather in the influence of the parties engaged in the cause than in a disinterested uprightness in upholding the law and enforcing the justice of the case to be decided; therefore the juries disregarded the bench, the court was tumultuous, and the stocks publicly broken before the Chief Justice. The community transferred their apprehensions from the dependence of the judges to the judicature itself, and all respect for a confidence in redress or security from the law was destroyed. The shopkeepers are the justices of the peace. They have the means of extortion and the power of enforcing payments; they are first the criminals then the judges; and the Court of Appeal seems to be so constructed as to prevent an honest verdict from passing into effect. The practice of the Court is unjust, oppressive and influenced; favorite attorneys were made deputy clerks of the peace, so that process might be entered and writs obtained most partially." He states several cases in which the law was disregarded, if his statements are well founded, and he concludes: "therefore when there was neither substance nor shadow of justice, but the will of power was the

rule of decision, the public mind was agitated in the extreme, and universal gloom pervaded the province." On March 10th, 1810, the Legislative Assembly passed a resolution declaring this pamphlet a false, scandalous and malicious libel, comprising expressions of the most unexampled insolence and contumely towards His Majesty's government of this province, the grossest aspersions on the House of Assembly, the courts of justice therein, and the officers of the civil establishment, and most manifestly tending to alienate the affections of the people from His Majesty's government of this province, to withdraw them from their obedience to the laws of the country and to excite them to insurrection."* Nevertheless it is certain that much dissatisfaction existed at that period.

In the second session of the first parliament an Act for the better regulation of the militia was passed. Similar Acts were passed in subsequent sesssions, the necessity of being prepared for possible hostilities being always present to the minds of those who had taken part in the revolutionary war. A sum of £5,000 to be applied in defraying the expenses of training and exercising the militia in such manner as the government should direct, was passed in the winter session of 1812. In the summer session an Act to make further provision for the raising and training of the militia, and an Act to provide for the defence of this Province were passed. In 1813 an Act to provide pensions for officers and others of the militia disabled on service, and for the widows and children of those killed in actual service was passed; and in this and the subsequent years many Acts were passed to render the militia more effective, to reward the meritorious, to punish by confiscation of their property and otherwise those who joined the enemy or gave them aid or comfort, and to relieve those who had sustained loss. Naturally the legislation of this period and for some years after was largely military in its character. Persons who had come from the United States to Canada, and who during the war had returned to their native country, were declared aliens, and their estates were vested in the Crown. Treason in different forms must have been widespread at that time, if we may judge from the Acts of the Legislature, and even a member of the House of Assembly joined the enemy. Several Acts were passed for the relief of persons who alleged that they were unjustly held guilty of treasonable acts, or that they had indiscreetly purchased the property of persons who afterwards joined the enemy. All the money at the disposal of the Legislature was used in payment of war expenses. In 1815 £6,000 was voted for the purpose. Of this £4,594 12s 6d was for six months' pay of the incorporated militia, £1,000 was for the pay of the officers and non-commissoned officers of the line, attached to the incorporated militia, and 100 guineas was voted to the Speaker of the House of Assembly, to purchase a sword to be presented to Col. Robinson, late of the incorporated militia. In this year also an Act was passed to provide for the accommodation of the Legislature at its next session, the Legislative buildings having been burned down when Toronto was taken by the U. S. troops.

*Assembly Journals, 1810, pp. 131-2.